



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of PHIL SALERNO,
Councilman, Sparks City Council
State of Nevada,

**Request for
Opinion No. 08-05C**

Subject.

**NOTICE OF HEARING
and
PANEL DETERMINATION**

NOTICE OF HEARING

PLEASE TAKE NOTICE, in accordance with Nevada Revised Statutes (NRS) 281A and 233B and Nevada Administrative Code (NAC) 281A, that a hearing is set before the Nevada Commission on Ethics. The purpose of the hearing is to consider allegations that the Subject, Phil Salerno (Salerno), violated the Ethics in Government law (NRS 281A) as listed below, under the Panel Determination section. Further, if during the hearing, the Commission finds a violation or violations, it will determine whether Salerno's conduct was willful and whether it will impose any civil penalties, pursuant to NRS 281A.480.

THE HEARING WILL TAKE PLACE:

**October 9, 2008 beginning at 9:00 a.m., or as soon thereafter as the
Commission is able to hear the matter, at the following locations:**

**NEVADA LEGISLATIVE BUILDING,
401 S. CARSON STREET, ROOM 3143,
CARSON CITY, NEVADA 89701
with a video-conference link to
GRANT SAWYER STATE BUILDING,
555 E. WASHINGTON AVENUE, ROOM 4401,
LAS VEGAS, NEVADA 89101.**

Salerno must be present when this matter is called. If Salerno is not present when this hearing is called, the Commission may consider as true the alleged violations specified in the Panel Determination below. Please direct any hearing scheduling matters to Patricia D. Cafferata, Executive Director, Esq., at (775) 687-5469, Ext. 222.

The hearing is open under Nevada's Open Meeting Law and may be attended by the public. A record will be made by a certified court reporter. Salerno has the right to appear, be represented by legal counsel, hear evidence presented to the Commission, respond, and present evidence on his own behalf.

Salerno also has the right to request that the Commission issue subpoenas on his behalf to compel witnesses to testify and/or produce evidence. In making this request, he may be required to demonstrate the relevance of the witness' testimony and/or evidence. Other rights are found in NRS 281A, NRS 233B, and NAC 281A.

A finding by the Commission of a violation of NRS 281A must be supported by a preponderance of the evidence.

PANEL DETERMINATION

In his private capacity, Salerno owns Grand Abacus, Inc., doing business as Nevada Forms and Printing (Nevada Forms). Nevada Forms does business with both John Ascuaga's Nugget Casino Resort (Nugget) and the Peppermill Reno Hotel Casino (Peppermill). In his public capacity, Salerno is a member of the Sparks City Council (Council) and thus, a public officer as defined in NRS 281A.160. Additionally, the allegations pertain to NRS 281A. Therefore, the Commission has jurisdiction over this matter.

An ethics complaint was filed against Salerno by Harvey Whittemore, partner with the Peppermill in the Lazy 8 development project, alleging Salerno violated provisions of NRS 281A during the August 23, 2006, September 20, 2006, and August 27, 2007 Council meetings. The complaint alleges Salerno: (1) sought or accepted a gift, service, favor, employment, engagement, emolument or economic opportunity from the Nugget (an opponent to the Lazy 8 project) that improperly influence him to depart from his public duties in violation of NRS 281A.400.1; (2) used his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, Nevada Forms, and/or the Nugget in violation of NRS 281A.400.2; (3) failed to properly disclose his private interests to the Nugget in violation of NRS 281A.420.4; and (4) failed to abstain from voting on the Lazy 8 matter that was being considered by the Council and that allegedly affected Salerno, Nevada Forms, and/or the Nugget.

Additionally, during the course of the Commission's investigation, information was discovered regarding issues and facts beyond those presented in the complaint concerning Nevada Forms' business with the Peppermill. Salerno was properly noticed pursuant to NAC 281A.415 regarding these additional issues and facts and he responded to the additional allegations.

On July 15, 2008, pursuant to NRS 281A.440.3, a Panel consisting of Commissioners Mark Hutchison and John T. Moran, III reviewed the following: Ethics Complaint; Response to Complaint; Investigative Report and Executive Director's Recommendations Regarding Just and Sufficient Cause; and the evidence collected.

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The following is the panel's findings:

I. Allegations concerning the Nugget:

The Panel found that **just and sufficient cause DOES exist** for the Commission to hold a hearing and render an opinion on the allegations that Salerno violated:

1. NRS 281A.420.4 by failing to adequately disclose his pecuniary interest in Nevada Forms and private commitment to the Nugget when the Lazy 8 matter was considered during the August 23, 2006 Council meeting.
2. NRS 281A.420.2 by failing to abstain from voting on the Lazy 8 matter when it was considered during the August 23, 2006 Council meeting.
3. NRS 281A.420.2 by failing to abstain from voting on the Lazy 8 matter when it was considered during the September 20, 2006 Council meeting.
4. NRS 281A.420.2 by failing to abstain from voting on the Lazy 8 matter when it was considered during the August 27, 2007 Council meeting.

Therefore, these allegations are **REFERRED** for a hearing.

The Panel also found that **just and sufficient cause DOES NOT exist** for the Commission to hold a hearing and render an opinion on the allegations that Salerno violated:

1. NRS 281A.400.1 when the Lazy 8 matter was considered during the August 23, 2006, September 20, 2006 and August 27, 2007 Council meetings.
2. NRS 281A.400.2 when the Lazy 8 matter was considered during the August 23, 2006, September 20, 2006 and August 27, 2007 Council meetings.
3. NRS 281A.420.4 by failing to adequately disclose his pecuniary interest in Nevada Forms and private commitment to the Nugget when the Lazy 8 matter was considered during the September 20, 2006 and August 27, 2007 Council meetings.

Therefore, these allegations were **DISMISSED**.

II. Allegations concerning the Peppermill:

The Panel found that **just and sufficient cause DOES exist** for the Commission to hold a hearing and render an opinion on the allegations that Salerno violated:

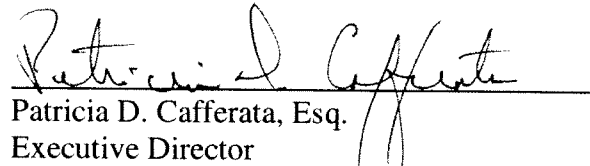
1. NRS 281A.420.4 by failing to adequately disclose his pecuniary interest in Nevada Forms and private commitment to the Peppermill when the Lazy 8 matter was considered during the August 23, 2006 Council meeting.
2. NRS 281A.420.4 by failing to adequately disclose his pecuniary interest in Nevada Forms and private commitment to the Peppermill when the Lazy 8 matter was considered during the September 20, 2006 Council meeting.
3. NRS 281A.420.4 by failing to adequately disclose his pecuniary interest in Nevada Forms and private commitment to the Peppermill when the Lazy 8 matter was considered during the August 27, 2007 Council meeting.
4. NRS 281A.420.2 by failing to abstain from voting, due to his pecuniary interest in Nevada Forms and private commitment to the Peppermill, on the Lazy 8 matter when it was considered during the August 23, 2006 Council meeting.

5. NRS 281A.420.2 by failing to abstain from voting, due to his pecuniary interest in Nevada Forms and private commitment to the Peppermill, on the Lazy 8 matter when it was considered during the September 20, 2006 Council meeting.
6. NRS 281A.420.2 by failing to abstain from voting, due to his pecuniary interest in Nevada Forms and private commitment to the Peppermill, on the Lazy 8 matter when it was considered during the August 27, 2007 Council meeting.

Therefore, these allegations are **REFERRED** for a hearing.

The Request for Opinion is **REFERRED** to the Nevada Commission on Ethics for hearing to render an opinion on the above allegations where the Panel found just and sufficient cause exists.

Dated: July 22, 2008


Patricia D. Cafferata, Esq.
Executive Director

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this 22nd day of July, 2008, in Carson City, Nevada, I placed a true and correct copy of the **NOTICE OF HEARING AND PANEL DETERMINATION ON RFO No. 08-05C** in an envelope and caused same to be hand delivered via Reno Carson Messenger Service, to the following addresses:

Phil Salerno, Councilman
Sparks City Council
431 Prater Way
Sparks, Nevada 89432-0857

Courtney G. Sweet, Esq.
Gunderson Law Firm
5345 Kietzke Lane, Ste. 200
Reno, Nevada 89511

Harvey Whittemore
2215 Hedgewood Drive
Reno, Nevada 89509-5160

DATED: July 22, 2008

Michele A. Ene
An employee, Nevada Commission on Ethics